IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2028 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NAVINCHANDRA JASANI & OTHERS

Versus

PRAVINCHANDRA JASANI & OTHERS

Appearance:

1. Special Civil Application No. 2028 of 1993

MR JR NANAVATI for Petitioner No. 1-7

MS SEJAL K MANDAVIA for Respondent No. 1-11

MR HC PATEL, Ld. AGP for Respondent No. 12

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. The short facts of the case are the petitioners are the Trustees of Shri Veraval Dashashrimali Vanik

Gnati (hereinafter referred to as the "Trust"). Respondents No.1 to 11 made an application to the Joint Charity Commissioner under Section 41A of the Bombay Public Trust Act (hereinafter referred to as the "Act") on 24-1-1989 contending that the applicants who are respondents herein and other members of 70 families since generations are residing in Veraval and on account of the business, service and/or other circumstances they are required to go outside Veraval and it is also contended that there are other natives of Veraval who are required to stay outside Veraval City for professional purpose. It was stated in the application that they had applied for becoming the members of the Trust. However, the said memberships are denied and, therefore, the powers were made for treating them at par with the other members of the Trust and to restrain the Trustees from applicants using properties of the trust as beneficiaries and also to direct the Trust to admit them as the members.

2. In response to the said application the reply was submitted by the petitioners and it was contended, inter alia, that the applicants therein are not the natives of Veraval and it was also denied that the applicants and other members of 70 families are staying in Veraval since generations. However, it was stated that merely because they are staying at Veraval, belonging to the community, it cannot be said that they are natives of Veraval. The petitioners had also raised the contention regarding the jurisdiction of the Jt. Charity Commissioner under Section 41A of the Act and it was submitted that there is no jurisdiction with the learned Jt. charity Commissioner to give such directions as prayed for. The Jt. Charity Commissioner ultimately after hearing both the sides passed the order on 23-12-1992, whereby the application made by respondents No.1 to 11 is allowed and Trustees of the Trust who are petitioners herein are directed to register the applicants and other persons belonging to Dashashrimali Vanik Gnati residing in Veraval as the members in "B" Class category and a further instruction was also given that the applicants and other members belonging to the said Community staying at Veraval should be allowed to use the property of the Trust on the payment of necessary fees. So far as the applicants and other persons to be admitted as "A" Class category members is concerned, observation was made that the necessary legal procedure may be undertaken. It is this order dated 23-12-1992 passed by the Jt. Charity Commissioner, which is under challenge in this petition.

3. The learned Sr. Counsel, Mr.Nanavati appearing for the petitioners has mainly raised three contentions

while questioning the jurisdiction of the Jt. Charity Commissioner under Section 41A of the Act. He submitted that as per the judgement delivered by the Division Bench in the case of "Syedna Mohamed Burhanuddin Vs Charity Commissioner, Gujarat State, Ahmedabad and Others" reported in 1992(1) GLH, 331, the Charity Commissioner has power under Section 41A of the Act in respect of the items which are related to or covered by Section 32 to 41 of the Act and there is no power of adjudicating of any right or dispute and such power can at the most be exercised for curing the human weakness or lapse on the part of the Trustees. Mr.Nanavati submitted that whether the original applicants before the Jt. Charity commissioner are staying at Veraval or not is in any case disputed and for establishing that a person has settled in Veraval, a full-fledged enquiry is required to be held and evidence is required to be led and for holding such inquiry or for leading evidence, the Jt. Charity Commissioner has no authority or jurisdiction under Section 41A of the Act and, therefore, he submitted that the order passed by the Jt. Charity Commissioner is without jurisdiction. Mr.Nanavati alternatively submitted that even on merits unless it is established on record by the original applicants before the Jt. Charity Commissioner that the applicants and other members of the 70 families have settled in Veraval, there was no question of giving any direction. Mr.Nanavati also submitted that as such the case of the applicants before the Jt. Charity Commissioner was that they are covered by "A" Class category, whereas the case is considered by the Jt. Charity Commissioner as if the applicants are claiming the rights, as the members of "B" class category. Therefore, he submitted that there is also non-application of mind and in any case, no relief can be granted in absence of evidence on record.

4. On behalf of the respondents, Ms. Mandavia, learned Counsel has submitted that as a matter of fact, it was admitted by the petitioners before the Jt. Charity Commissioner that the original applicants are belonging to the said community. She also submitted that as mentioned in the order, their settlement in Veraval was also admitted by the petitioners herein, who were respondents before the Jt. Charity Commissioner. She submitted that if these contentions are admitted namely that the applicants are belonging to the said community and that they have settled in Veraval, then in her submission, the Jt. Charity Commissioner was justified in giving such directions under Section 41A of the Act. Ms. Mandavia has relied upon the judgement of this Court in the case of "Acharya Shree Mahaprabhujini Ranavaswala

Bethak Mandir Trust, Godhra & Ors. v. Chokshi Ratilal Chandulal & Ors.", reported in 1996(3) GLH, 307 to contend that the Jt. Charity Commissioner has wide supervisory power over all the Trusts under Section 41A read with 69 of the Act and, therefore, when such direction is given the same is within the power of the Jt. Charity Commissioner and hence she submitted that the order cannot be said to be without jurisdiction. Ms.Mandavia has submitted that when there was admission recorded in the order, no evidence is required to be led for such purpose and, therefore, the direction given by the Jt. Charity Commissioner upon the admission is perfectly legal and valid.

5. Before I consider the alternative contention of Mr.Nanavati regarding the merits of the case, it is necessary to examine the first contention of Mr.Nanavati on the question of jurisdiction of Jt. Charity Commissioner under Section 41A of the Act. In case of "Syedna Mohamed B. v. Charity Commissioner, Gujarat State, and Others" (Supra), the Division Bench of this Court, after taking into consideration the provisions of Section 69 of the Act while construing Section 41A of the Act, has observed as under:

> "A quick glance at these provisions to which all religious trust are subject makes it clear beyond any doubt that the three matters which S. 41A provide for - (a) proper administration of a public trust, (b) proper accounting of its income and (c) due appropriation and application of the income to the objects and for the purposes of the trust are abbreviated expressions of those very matters which Ss. 32 to 41 provide for. The only purpose which, therefore, S.41A serves is to issue directions in respect of matters falling under Ss.32 to 41. It is, therefore, merely an enabling and ancillary provision intended to make the implementation and enforcement of the provisions of Sc.32 to 41 more effectively."

However, the Division Bench at para 41 has observed as under:

> "So far as the nature of directions contemplated by S.41A is concerned, on analysing its contents and comparing them with the provisions of Ss.32 to 41 of the Act, there is little doubt that they are administrative in character. They are intended to be issued for better and more efficient administration of a public trust. No

question of adjudication of any controversy, dispute or lis arises thereunder. The object of S.41A is to streamline the administration of public trusts and to ensure more effective implementation and enforcement of the provisions of the Act. Since they are not quasi-judicial directions, the question of complying with principles of natural justice does not arise."

Further at para 42 the Division Bench has observed as under:

"A general direction which may be necessary to be issued to all public trusts will not ordinarily be left to the disretion of the Charity Commissioner. Its very nature will require it to be made the subject-matter of a statutory rule under the said Act. Issuance of such a direction can hardly be left to the human weakness of the Charity Commissioner. S.41A contemplates cases of individual trusts which may be suffering on account of the human weaknesses or lapses of the trustees. S.41A is to be brought into play where some exceptional, unforeseen, unexpected or peculiar situation has arisen in the administration of a public trust which is required to be cured by a remedial direction or where circumstances have arisen foreboding such a situation which requires a preventive measure in the form of a direction."

6. Keeping in view the aforesaid observations made by the Division Bench, it is clear that the Jt. Charity Commissioner will be entitled to exercise the power under Section 41A of the Act in respect to the items which are specified under Section 32 to 41 of the Act. If the averments made in the application are considered then it appears that the basis of the application was that the applicants therein before the Jt. Charity Commissioner were ascertaining that they have a right to be admitted as the members of the Trust since they are natives of Veraval and because of the conservative interpretation given by the Trustees of the Trust, they are not being admitted as the members. Therefore, if while administering the Trust, the question arises regarding the interpretation of making any expenses or running day-to-day affairs of the Trust, it might fall under the scope of Section 41A of the Act. However, the question of right to be admitted as the members of the Trust is an independent right which a person may be claiming upon the terms and conditions of the Trust against the Trustees of

the Trust. In assertion of such right an inquiry is required to be held for the purpose of establishing the case as to whether the applicants who are ascertaining the right, are covered by the eligibility criteria of becoming the members or not. Such process in my view would require adjudication of the facts and, therefore, in view of the ratio of the Division Bench in case of "Syedna Mohamed B. v. Charity Commissioner, Gujarat State, and Others" (Supra) the adjudication process is not envisaged under Section 41A of the Act.

7. Even if the matter is examined from the view point of the contention raised by both the sides before the Jt. charity Commissioner on merits, it is clear that the Trust provides for two types of membership; (1) persons belonging to the community who are originally native of Veraval, and (2) persons who are belonging to the community and who have settled in Veraval from outside. The applicants raised the contentions from both the angles namely that those who are original native of Veraval who are required to go outside Veraval and some persons belonging to the community who have settled in Veraval. Whereas the contention raised on behalf of the Trust was that trust was disputing the stand of the original applicants that they are natives of Veraval or they have settled in Veraval. Therefore, even if the applicants or other persons, on whose behalf application was made to the Jt. Charity Commissioner for ascertaining their right to be admitted as the members, it was required to be examined as to whether they are natives of Veraval or whether they have settled in Veraval. Both these aspects can be examined only if a full-fledged inquiry is held and the parties are given opportunity to lead evidence. In absence of any finding of fact and proper evidence on record, it cannot be said that merely because certain persons are belonging to a particular community and hence they would be eligible to be admitted as the members of the Trust. Ms.Mandavia has contended that there is an admission in the order of the Charity Commissioner, which has been recorded on internal page No.5 as if it was the stand of the petitioners before the Charity Commissioner that it appears that the applicants have settled in Veraval from outside. However, the perusal of the written submission submitted on behalf of the petitioners before the Charity Commissioner does not show such admission. It is not recorded by the Charity Commissioner that any concession or admission was made during the course of arguments by the learned Counsel appearing on behalf of the petitioners herein. Therefore, it can be said that the admission recorded by the Charity Commissioner in the

order is not supported by the record of the case or otherwise and, therefore, when such admission is not supported by the record of the case, I cannot accept the contention of Ms.Mandavia that there was admission by the petitioners regarding the settlement of the applicants in Veraval and, therefore, no evidence was required to be led.

8. The judgement upon which the reliance is place by Ms.Mandavia in the case of "Acharya Shree Mahaprabhujini Ranavaswala Bethak Mandir Trust, Godhra & Ors. v. Chokshi Ratilal Chandulal & Ors." (supra) rather reiterates the principles laid down by the Division Bench in the earlier judgement and, therefore, I am of the view that the said judgement is of no help to the respondents herein.

9. In view of the above discussion, it appears that the order passed by the Jt. Charity Commissioner in not only without jurisdiction, but is based on the finding which is perverse to the record of the case and, therefore, the order dated 23-12-1992 passed by the Jt. Charity Commissioner, Rajkot in Judicial Misc. Application No.8/89 is quashed and set aside with the clarification that it will be open to the original applicants, who are respondents No.1 to 11 to take recourse under the law to assert or claim the right to be admitted as the members, if any, by separate independent proceedings as may be available to them under law. The petition is allowed to the aforesaid extent. There shall be no order as to costs. Rule is made absolute.

7-8-2002 (Jayant Patel, J.)

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